司法機構
JUDICIARY

高等法院 The High Court

電話 Tel: 2825 4514
傳真 Fax: 2524 6313
本函檔號 Our Ref.: HCAL 189/2017
來函檔號 Your Ref.:

(BY FAX & BY POST)
21 December 2017

CHEN, Noel
Room D, 7/F, National Court,
242 Nathan Road,
Jordan, Kowloon
Fax: 2769 1010

Dear Mr Chen,

Re: HCAL 189/2017

I refer to your letter dated 19 December 2017. Please be informed that the Honourable Mr Justice Au made the following directions on 21 December 2017:-

1. **The application shall be served on the Putative Respondent as well for their response, if any, before the Court would consider it.**

2. **Mr Chen therefore shall serve the application on the Putative Respondent and confirm with the Court in writing on how and when that is done.**

Yours sincerely,

(NG Kwok-sun, Sunny)
Clerk to the Honourable Mr Justice Au

彩虹行動
Rainbow Action

Room D, 7/F National Court
242 Nathan Road
Jordan, Kowloon
Email: rainbowactionhk@gmail.com
Tel: 9791 4641
Fax: 2769 1010

19 December 2017

High Court
38 Queensway
Hong Kong

Dear Sirs,

Re: HCAL 189/2017

I am CHEN, Noel, Committee Member of Rainbow Action. I write on behalf of Rainbow Action to apply for intervening in the captioned proceedings.

I enclose in this letter my affirmation in support of my application dated 19 December 2017.

Thank you for your kind attention and consideration.

Yours sincerely,

TOMMY 18

CHEN, Noel

RECEIVED
19 DEC 2017
R&D,
High Court

CN: 1st: 19.12.2017
HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward — Applicant

and

Commissioner of Registration — Putative Respondent

AFFIRMATION OF CHEN, NOEL

I, CHEN, Noel, Committee Member of Rainbow Action, Room D, 7/F, National Court, 242 Nathan Road, Jordan, Kowloon, Hong Kong, do solemnly, sincerely and truly affirm and say as follows:-

1. I am a committee member of the Rainbow Action, a Hong Kong registered society established in 10th December 2000 that is involved in advocacy for issues relating to all sexual minorities, including issues such as discriminatory policies, police harassment, quality of life issues, and unjust legislation.

2. Unless otherwise stated, the facts deposed hereto are within my personal knowledge and are true, or are obtained in the course of my research and work as a leading LGBTI activist. Insofar as they are not within my personal knowledge, they are derived from files and records to which I have access, or from sources I identify below and are true to the best of my knowledge, information and belief.

3. I make this affirmation as an intervener in the Applicant's judicial review to challenge the Hong Kong government's policy to require transgender people to undergo and complete a full sex reassignment surgery before they are allowed to amend their particulars in identification documents.

Introduction

4. The scope of the intervention is limited – simply to produce an affirmation of Dr. Stephen Whittle, himself a transman, and the Professor of Equalities Law at Manchester Metropolitan University. We do not seek to advocate or to have a representative in Court.

5. He is a co-founder of Press For Change (PFC), the UK's transgender lobbying group, which fought cases at the European Court of Justice and the European Court of Human Rights. He was an advisor to the UK, Irish, Italian, Japanese and South African governments, the Council of Europe and the European Commission on transgender issues. He was appointed special advisor to the Parliamentary Women & Equalities Committee Inquiry into Transgender Equality and has received many awards for his academic and voluntary work, including a Lambda Literary Award as co-editor of "The Transgender Studies Reader" and The Stonewall Award from the American Bar Association in recognition of his contribution to "removing barriers and championing diversity for the LGBT community, both within the legal profession and impacting the greater human universe." In 2005, he was made an Officer of the Order of the British Empire in the Queen's New Year's Honours list for his work with the British Government on transgender rights. In 2016, he was elected a Fellow of the Academy of Social Sciences. There is now produced and shown to me, marked "**CN-1**", a print out of Professor Whittle's profile from the Gender Recognition Legislation in Hong Kong: Opportunities and Challenges forum held by the Centre of Comparative and Public Law of the University of Hong Kong on 23rd September 2017.

6. The Rainbow Action was set up on 10th December 2000. Its work is mainly divided into three parts: (1) direct actions through lawful protests and assemblies, (2) public education, and (3) research.

7. To date, Rainbow Action has addressed the Legislative Council numerous times. It has also participated in interviews on radio, television, magazines, newspapers and other media and presenting the lives of sexual minorities and the discrimination they face, including transgender persons in public.

8. Rainbow Action also maintains close contact and cooperation with other NGOs in this area of work. We therefore have an interest in intervening in these proceedings.

Professor Stephen Whittle

9. Over the course of years, Rainbow Action has come into contact with many experts in the field of sexual minorities, including experts in transgenderism. After the Gender Recognition Legislation in Hong Kong: Opportunities and Challenges forum, which was organised and held by the Centre for Comparative and Public Law at the University of Hong Kong on 23rd September 2017, we came to know that one of the speakers, Dr. Stephen Whittle delivered a keynote speech. I also learned at the same forum that TSE, Henry Edward whom I had met before was having a judicial review case against the Hong Kong government's policy which requires transgender persons to undergo full sex reassignment surgery before they would be issued with identity cards of their chosen gender.

10. Subsequently, I approached Dr. Stephen Whittle to ask if he can provide an affirmation outlining the experience as a post-operative transman which I believe would provide assistance to the Court as he is the leading legal expert and activist in the United Kingdom for transgender rights, and he himself has

elected to undergo surgery but only after a considerable period of time as living as a transman.

11. As a result, by reason of the aforesaid, there is now produced and shown to me, marked **"CN-2"**, a copy of his draft affirmation which he has prepared for the purpose of intervening in these proceedings.

12. We understand that the application is close to the hearing date, but we also strongly believe that Dr. Whittle's personal experiences are universal for all transmen and is not limited to race or culture and apply equally to the transmen community in Hong Kong.

13. We therefore humbly request that the Court grant our application and allow us to intervene on a limited basis for the purpose of adducing Dr. Stephen Whittle's affirmation as evidence in these proceedings.

~~AFFIRMED at~~)
)
)

~~Sworn~~/Affirmed at the Courts of Justice,)
HKSAR this 19 day of Dec 2017 .)

TOMMY

Before me,

NG Siu-kin
Commissioner for Oaths
JUDICIARY

19 DEC 2017

CN: 1st: 19.12.2017

HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward	Applicant
and	
Commissioner of Registration	Putative Respondent

AFFIRMATION OF CHEN, NOEL

Dated this of 2017
Filed this of 2017

CHEN, NOEL
Committee Member of Rainbow Action
Room D, 7/F National Court
242 Nathan Road
Jordan, Kowloon, Hong Kong
Tel: 9791 4641
Fax: 2769 1010

CN: 1st: 19.12. 2017
HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward — Applicant

and

Commissioner of Registration — Putative Respondent

AFFIRMATION OF CHEN, NOEL

This is Exhibit **"CN-1"** of the Affirmation of CHEN, Noel affirmed on 19 Dec 2017.

Exhibit	Name of Document	Date	Pages
CN-1	A print out of Professor Whittle's profile from the Gender Recognition Legislation in Hong Kong: Opportunities and Challenges forum held by the Centre of Comparative and Public Law of the University of Hong Kong	23rd September 2017	2

Before me,

NG Siu-kin
Commissioner for Oaths
JUDICIARY

19 DEC 2017

ROBIN BRADBEER was Associate Professor at CityU for 21 years until retirement in 2010. She co-founded Transgender Equality and Acceptance Movement (TEAM) in 2002 and has been elected to the Election Committee for Chief Executive three times for the IT Functional Constituency. She is Secretary of The Professional Commons - a public policy think tank.

Also a member of the Civic Party, Robin has been active in keeping gender recognition issues on the policy agenda of legislators. She currently acts as a STEM education consultant to local schools.

KASPAR WAN is a proud trans-man from Hong Kong, who has acquired gender X on his Australian Passport, and gender M on his BNO passport. After finding himself, Kaspar has now set up an organization, Gender Empowerment, to work with the trans community in Hong Kong. They provide various services to the community, and work with different

stakeholders in order to create social change. He has participated in regional and international meetings concerning trans and LGBTI issues, such as the WPATH Symposium, the Asia Pacific Trans Health Blueprint meeting and the UN organised "Being LGBT in Asia" regional dialogue. His short documentary "Kaspar X - If I Had a Soul" has been screened in more than 10 queer film festivals around the world. He often educates the general public on trans issues by sharing through media and at universities and corporates. He is now doing his MPhil study researching on parents of trans persons.

BRENDA RODRIGUEZ ALEGRE was born in the Philippines. She is a Registered Psychologist and graduated with Magna Cum Laude honors in her PhD in Clinical Psychology. Her MA thesis and PhD dissertation were about transgender women. She is among the Board of Directors of The Society of Transsexual Women Advocates of the Philippines, the

first and longest existing support and advocacy group for and of transgender women. She is one of the Trans Secretariat of the International LGBT Association and leads the English speaking members of the Transgender Resource Center in Hong Kong and is a member of Association of World Citizens Hong Kong. She is a Resident Tutor at Lap Chee College and a Lecturer at the University of Hong Kong, teaching Sexuality and Gender. She has upcoming publications on transgender people's experience and has been active in activism and rights advocacies for LGBTQ and Women in the Philippines and Hong Kong. She is a Soprano in The Harmonics, the first LGBTQA choir in Hong Kong.

SIUFUNG LAW is a trans* and genderqueer bodybuilder, poet, artist, trans* scholar and advocate. Biologically female and socially male, s/he competes as female bodybuilder since 2015 and has been awarded several champions in local and international bodybuilding contests.

YIU-TUNG SUEN is Assistant Professor and Graduate Division Head of the Gender Studies Programme, and Associate Director of the Gender Research Centre, at the Chinese University of Hong Kong. He is also the Founding Director of the Sexualities Research Programme, the first research programme in Hong Kong dedicated to conducting rigorous, independent

research on sexuality issues, with a focus on sexual orientation, gender identity, law and social policy. Internationally, he serves as a consultant for the United Nations Development Programme Being LGBTI in Asia programme, working closely with their Bangkok and Beijing offices.

GEOFFREY YEUNG was a Founding Associate Fellow of the Sexualities Research Programme at Chinese University of Hong Kong. He graduated with a Bachelor of Laws from the University of Hong Kong, and was a Rhodes Scholar at the University of Oxford. He is currently a Pupil Barrister in Hong Kong.

FERN NGAI is Chief Executive Officer of Community Business. Under her leadership, the organisation has expanded its products and services, established a subsidiary in India, and has launched the ground-breaking Hong Kong LGBT+ Inclusion Index and annual Awards. Fern is a Steering Committee member of the 30% Club Hong Kong which believes in

collaborative, concerted business-led efforts to help accelerate progress towards gender parity on Hong Kong corporate boards. Originally from Canada, Fern has 40 years of broad experience in financial services, technology, change management, and in workplace diversity and community programmes. She held leadership roles in the human resources, technology and operations, governance, and corporate affairs functions at Standard Chartered Bank and was its first diversity and inclusion champion for Hong Kong. She volunteers as a board director of KELY Support Group, a Hong Kong charity supporting young people.

SAM WINTER taught and researched at the University of Hong Kong for 30 years. Since 2015 he has headed a small sexology team at the School of Public Health at Curtin University in Perth, Western Australia. A psychologist by training and professional experience, he teaches, researches and publishes in trans health and rights. He also works with trans clients. He has

worked with WHO (on the current ICD-11 proposals, including those to remove trans diagnoses from the mental disorders chapter), with UNDP (their 2012 *Lost in Transition* report), and with UNESCO (tools for examining homophobia and transphobia in schools). He is a board member of the World Professional Association for Transgender Health (WPATH) and was on the authoring team for the Standards of Care (SOC-7). He was one of the commissioned authors for a series on transgender health published in the *Lancet*. He does advocacy work regionally and worldwide, working with Asia-Pacific Transgender Network (APTN), Global Action for Trans* Equality (GATE), and other groups.

FORUM

Gender Recognition Legislation in Hong Kong: Opportunities and Challenges

Saturday, 23 September 2017

CCPL
CENTRE FOR COMPARATIVE AND PUBLIC LAW
比較法與公法研究中心
AT THE FACULTY OF LAW, THE UNIVERSITY OF HONG KONG

平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

PROGRAMME

9.00-9.10 WELCOME REMARKS

Michael Hor, Dean, Faculty of Law, HKU
Kelley Loper, Director, CCPL, Faculty of Law, HKU

9.10-10.00 KEYNOTE SPEECH

Stephen Whittle, MMU
Gender Recognition Legislation: International Approaches to Administering Personal Autonomy

10.00-11.30 PANEL 1 – KEY ISSUES, INTERNATIONAL AND LOCAL LEGAL PERSPECTIVES

Moderator: Kelley Loper, HKU
Commentator: Stephen Whittle, MMU
Peter Reading, Legal Counsel, EOC HK
Key issues and international human rights law
Michael Vidler, Solicitor, Vidler & Co. Solicitors
Hong Kong cases and litigation strategy
Patricia Ho, Partner, Daly & Associates
The violation of rights of marginalized transgender persons

11.30-11.45 COFFEE BREAK

11.45-13.00 PANEL 2 – TRANSGENDER COMMUNITY VOICES

Moderator: Azan Marwah, Barrister and Mediator, Gilt Chambers
Robin Bradbeer, Secretary at The Professional Commons, former Professor at CityU
Joanne Leung, Chairperson, Transgender Resource Centre HK
Kaspar Wan, Filmmaker and Founder of Gender Empowerment
Brenda Alegre, Lecturer, Sexuality & Gender : Diversity & Society Course (SGDS), HKU
Siufung Law, Bodybuilder and Teaching Assistant, HKU

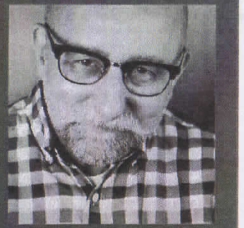
13.00-14.15 LUNCH BREAK

14.15-15.45 PANEL 3 – GENDER RECOGNITION: PERSPECTIVES OF KEY STAKEHOLDERS

Moderator: Marco Wan, Faculty of Law, HKU
Suen Yiu Tung, Assistant Professor of Gender Studies, Associate Director, Gender Research Centre, CUHK and
Geoffrey Yeung, Pupil Barrister
Empirical Data on Gender Recognition and Mental Health of Transgender People in Hong Kong
Fern Ngai, Chief Executive Officer, Community Business
Transgender Inclusion – A Business Perspective
Sam Winter, Psychologist, Associate Professor, Faculty of Health Sciences, Curtin University
The health case for progressive gender recognition laws

15.45-16.00 CLOSING REMARKS

Alfred Chan, Chairperson, Equal Opportunities Commission



STEPHEN WHITTLE OBE, PhD, DLaws hc, FAcSS, MA, LLB , BA is Professor of Equalities Law at Manchester Metropolitan University.
In 1975 Stephen set up the UK's first local trans support group in Manchester, and transitioned to living as Stephen. Having lost many jobs because of being trans he decided things would only change if trans people understood the law. After qualifying in law, Stephen became a co-founder of Press For Change (PFC), the UK's transgender lobbying group. PFC fought cases at the European Court of Justice and the European Court of Human Rights to gain legal recognition for Trans people in the Gender Recognition Act 2004.
Stephen has been an advisor to the UK, Irish, Italian, Japanese and South African governments, the Council of Europe and the European Commission. He advises lawyers, regularly writes court briefs, or is an expert witness in courts across the world. In 2015, he was appointed special advisor to the Parliamentary Women & Equalities Committee Inquiry into Transgender Equality. Stephen has received many awards for his academic and voluntary work, including a Lambda Literary Award and The Stonewall Award from the American Bar Association. In 2005, he was made an Officer of the Order of the British Empire in the Queen's New Year's Honours list for his work with the British Government on transgender rights. In 2016, he was elected a Fellow of the Academy of Social Sciences.
Stephen and his wife Sarah married in 2005 after Stephen gained legal recognition as a man, but have been partners for 39 years. They have four children.

PANELISTS

PETER READING is an international human rights lawyer who has been working in the field of human rights law and advocacy for 18 years in Australia, the UK, Europe, Commonwealth countries, and most recently in Hong Kong. Since 2012, he has been Legal Counsel at the Equal Opportunities Commission (EOC) Hong Kong. In his role he has been leading the EOC's Discrimination Law Review project to modernise all existing discrimination legislation in Hong Kong relating to sex, disability, race and family status. He has also been instrumental in the EOC's legal work relating to promoting equality for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) groups. This has included the work relating to introducing LGBTI anti-discrimination legislation, the rights of cohabiting same sex couples, as well as introducing gender recognition legislation for transgender people. Previously Peter worked in London in a number of human rights roles including at Amnesty International UK; the Commission for Racial Equality as Principal Litigation Officer and Head of European and International Legal Policy; the Equality and Human Rights Commission as a Senior Lawyer and Director of Legal Policy; and at the Commonwealth Secretariat as a human rights consultant on Commonwealth projects.

MICHAEL VIDLER is a solicitor and founder of Vidler & Co Solicitors. He has been involved in the advancement of LGBTI rights in Hong Kong for many years, both through his work with LGBTI NGOs and his handling of landmark LGBTI rights cases including; *Leung TC William Roy v. The Secretary for Justice, Cho Man Kit v Broadcasting Authority, W v. Registrar of Marriages* and *QT v. Director of Immigration.* He is the proud recipient of HKLGFF 2015 Prism Award for his LGBTI rights work. He is currently working on judicial review challenges for trans men Q, R and Henry Tse, who are challenging the HK policy requirement of full SRS prior to recognition and amendment of the gender markers in their HKID cards.

PATRICIA HO is a Hong Kong based human rights lawyer. Much of her and her firm Daly, Ho & Associates' work involves defending the rights of minority groups in Hong Kong by way of challenging government policies and law in judicial reviews. Her cases include a number of landmark judicial review test cases concerning asylum seekers/refugees (issues include access to social welfare, release from detention, permission to work), transgender persons (discriminatory treatment in detention), domestic helpers (right to security), sex workers (right to security) and victims of human trafficking. Apart from litigation, Patricia provides legal and strategic advice to a number of NGOs in Hong Kong, and works with both local and international bodies to advocate for the rights of marginalised groups, including refugees, asylum seekers and victims of human trafficking in Hong Kong.

JOANNE LEUNG was born as a boy and completed her Sex Reassignment Surgery in 2009. She is a public figure in the LGBT movement in Hong Kong and Mainland China. She founded the Transgender Resource Centre (TGR) in 2008 and has been the chairperson since then. In 2016, Joanne has taken a big step forward by joining the Democratic Party as the first transgender politician in Hong Kong.

CN: 1st: 19. 12. 2017
HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward — Applicant

and

Commissioner of Registration — Putative Respondent

AFFIRMATION OF CHEN, NOEL

This is Exhibit **"CN-2"** of the Affirmation of CHEN, Noel affirmed on 19 Dec 2017.

Exhibit	**Name of Document**	**Date**	**Pages**
CN-2	A copy of the draft affirmation of Professor Stephen Thomas Whittle	-	27

Before me,

NG Siu-kin
Commissioner for Oaths
JUDICIARY
19 DEC 2017

STW: 8th January 2018

HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward	Applicant
and	
Commissioner of Registration	Putative Respondent

AFFIRMATION OF PROFESSOR STEPHEN THOMAS WHITTLE

I, Professor STEPHEN THOMAS WHITTLE, of The School of Law, Manchester Metropolitan University, All Saints, Oxford Rd, Manchester, M15 6BH, DO SOLEMNLY AND SINCERELY AFFIRM AND SAY AS FOLLOWS:-

1. I make this Affirmation at the invitation of CHEN NOEL (known to me as "**Tommy**") Committee Member of Rainbow Action.

2. Unless otherwise stated, the facts and matters to which I depose herein are within my personal knowledge and are true. Where the facts and matters are not within my personal knowledge, they are based or have

come to my knowledge from information derived from the source or sources to which I will refer, and are true to the best of my knowledge and belief.

3. I have been invited by Tommy to make this Affirmation to set out, from the perspective of a post-operative transgendered person, the procedures and the difficulties that I have experienced during and post full sex reassignment surgeries ("**SRS**").

A. <u>My Background</u>

4. I am writing this statement you in my capacity as Professor of Equalities Law at Manchester Metropolitan University. My Doctorate of Philosophy was in 'Transsexuals and the Law'. I am also Vice-President, and Head of Legal Services, of Press for Change (PFC) which as well as campaigning for respect and equal rights for transgender and transsexual (trans) people in the United Kingdom, has also provided a free legal advice service for them, their family, employers, and service providers since 1995. In that capacity, I also sit on the Parliamentary Forum concerned with issues relating to the legal status and rights of trans people, chaired by Baroness Gould.

5. I have been involved in support organisations for trans people since 1975. From 2010-2012 I was chair of Transgender Europe (TGEU). From 2007 to 2009, I was President of the World Professional Association for Transgender People (WPATH), the first non-medical doctor to be elected to this role. I had been Chair of WPATH's Legal Committee from 1998 to 2005, and a member of the Executive board of WPATH from 2005 to 2011.

6. As such, I have spent over 40 years providing support and/or legal advice services to the Trans community; initially as an activist, then as an academic researcher, and finally as a Stakeholder to the UK Government in the processes leading to legal changes such as the Sex Discrimination (Gender Reassignment) Regulations 1999, the Gender Recognition Act 2004, and the Equality Act 2010. In 2003-8 I sat on the Implementation board of the Gender Recognition Act, and I was a member of the Expert Reference Panel to the Discrimination Law Review as well as the Trans community's Stakeholder representative on the Equalities Review from 2005 to 2010. I was appointed a member of the Specific Duties group for the Equality Act 2010. In 2015, I was appointed Special Advisor to the Women and Equalities Parliamentary Select Committee's inquiry into Transgender Equality. I have written extensively in the field for academic journals, monographs and more journalistic pieces for newspapers such as the Times, and professional magazines such as Personnel Management.

7. I am myself a female to male trans man, having transitioned 42years ago in May 1975. I have an extensive knowledge of the personal experience of being a female to male transgender person. I was founder and co-coordinator of the UK's support network for (female to male) trans people (the FTM Network) from 1989 to 2009. The organisation has had over 4000 trans men as members during that period of time. As coordinator of the FTM Network, I responded to personal queries from members of the FTM Network, edited the quarterly magazine of the network; 'Boy's Own', and organised the annual meeting of the organisation's members. Combined with my provision of legal advice to Trans community members, since 2002, in my work with PFC, this means I have extensive knowledge of the general experiences of the Trans community in the UK and Europe, and of the changes brought about by hormone therapy and surgical reassignment.

8. I have also extensively researched the issues of legal status and social acceptance of transsexual people throughout the world, in my academic career. In that capacity, I have advised in court cases, legislation, case law implementation and clinical service provision including many cases concerning applications for funding for gender reassignment treatments, in many countries including Hong Kong, the US, Australia, South Africa, Israel and Spain, amongst others, as well as the UK.

9. I have an extensive knowledge of the law and social settings of trans people in overseas states. I regularly provide country reports for the Home Office and Immigration Appeal Tribunals. These have included India, Pakistan, North Korea, Tanzania, Malaysia, Kenya and Saudi Arabia. I have also been an advisor, or amici curiae in cases regarding Civil Status, Health and Welfare provision, Asylum and Immigration, and the Health insurance sector, throughout the world. These have included P v. S & Cornwall County Council [1996], ECJ (Case C-13/94) IRLR 347, R v North West Lancashire HA ex p A, D and G [1999] CA, 1 WLR 977, Goodwin v the United Kingdom [2002-IV] ECHR (App No 28957/95) 2 FLR 487, Jiffy Javellana et al. v. John Ashcroft et al No. 2:04-cv-09672-DT-RC., [2005] U.S. District Court for the Western Division of California, and Alexandre Dumbadze v. Georgia, currently before the European Court of Human Rights.

10. In my capacity as Head of Legal Services for Press For Change I have dealt with many enquiries from trans people in relation to their rights, taking their case histories and giving advice to them or their legal representatives over the last 24 years. I have also extensively researched the issues of legal status and social acceptance of transsexual people throughout the world, I personally know more than 4000 trans men from nations throughout the world, and I or my research assistants have undertaken extensive research interviews and oral histories with more than 300 trans men and women for my academic work.

11. In this statement, I will refer to trans people and trans men. Trans is used in an inclusive manner, referring to all those people who during their early years develop a gender identity which is opposite to that of their attributed natal gender as recorded on their original Birth certificate. I will not use the term transsexual, as it is increasingly only used by professional clinicians to refer to that minority of trans people who access surgical gender reassignment. Nor do I use the term transgender, as there is a wide variety in understandings of what being 'transgender' means depending upon the age, nationality, and socio-economic background of respondents.

B. <u>My Diagnosis of Gender Dysphoria</u>

12. I was born in 1955 in Manchester, and was an unhappy child, and later became a deeply unhappy and suicidal teenager. I discovered that gender reassignment was medically possibly in 1971, and spent my last two years at secondary school finding out everything I could about the available treatments.

13. I initially sought help for my experience of my gender identity in 1973. I saw two psychiatrists and two psychologists over the next two years. In 1975, a person was required to live in their preferred gender role for at least 3 months before cross-sex hormone therapy would be provided. In May 1975, with my family doctor's support (my GP) I informed my line manager of my decision to transition. He, in turn, informed my employers that I was going to be attending work dressed in men's clothes with the new name 'Stephen'. I also changed my name using a statutory declaration, and I informed the Inland Revenue, and the Department of Social Security of my intention to permanently change my gender and live as Stephen. In August 1975, the psychologists reported that I had gender dysphoria; was well informed as to the potential and limits of cross-sex hormone therapy, and had capacity to

consent to hormone therapy. However, in November 1975, the psychiatrist whose care I was under told me that after 6 months of working and living as Stephen, I would never live successfully as a man and he dismissed me from his clinic.

14. My GP realised that this refusal would again make me suicidal. She made the decision to prescribe cross-sex hormone therapy, and within a few weeks I saw physical changes to my body; menstruation had ceased, four months later my voice had broken, and by the end of a year I could grow a full beard and was fully accepted as a man by close friends who knew my trans status, by many of my fellow workers, and by strangers in public and social spaces. My parents found it difficult, but supported me. They said they had known since I was aged between three and four, that I "should have been a boy". However, without a psychiatrist's support, I was unable to obtain a referral for any gender reassignment surgery. Over the next 4 years I had to bind my breasts every day, but I worked full time until in September 1977 I accepted a placed to study Geography in African and Asian Studies at Sussex University.

15. In May 1978 I met my wife Sarah. I knew immediately that I wanted to live with her for the rest of my life. She met a small man with a large bushy beard, but my body was still very much a mix of male and female characteristics. I decided to tell her my gender history within three weeks of our first meeting; I was concerned that she would walk away, but decided I would rather that happened sooner than after I had fallen in love. However, Sarah, who was 18 and still at school when we met, has always said that she has never doubted that I am a man. We became lovers by the end of that summer, and moved in to our first house together in February 1979. We married in 2005, eight weeks after the Gender Recognition Act 2004 came into force, and I received a Gender Recognition certificate and a new birth certificate. We also then jointly adopted our four children, whom Sarah had conceived using donor

insemination. Next year will be the 40th anniversary of that first meeting.

16. In early 1979, I sought help because I experienced breakthrough bleeding. The doctor who eventually saw me said I had developed erosions of the cervix and needed an urgent hysterectomy. He was astonished when I explained I had not yet undergone a bilateral mastectomy, so he arranged for me to have both surgeries at the same time at the start of the University's summer vacation. Two weeks later I was back at my summer job, teaching English as a Foreign language. Like most trans men, I wished I had been born with a penis, however when I transitioned in 1975 it seemed such an operation was impossible.

C. <u>Reasons I Underwent Full SRS</u>

17. In the mid 1980s I discovered there was a surgeon, Mr John Prior, performing phalloplasty surgery at the St Peter's hospital in London. At that time, I had struggled to keep a job because of my trans status, and so had entered the building trade. I set up a small construction and property development company and soon had six men working for me. However, as a self-employed sole trader I could not imagine taking time out of work to undergo such intensive surgery.

18. Since my transition, I have been a volunteer for various trans support organisations. In 1989, I was asked if I could support another trans man; CM, because, intending to commit suicide, he had shot himself after undergoing 'pubic flap phalloplasty' surgery with Mr Pryor. Pubic flap phalloplasty requires a 10cm x 10cm flap of skin which carved from the lower torso. The flap is still attached at the bottom, the top is dropped, and then the skin is curled round and sewn into the shape of a phallus. The upper torso skin is pulled down to cover the donor site.

19. I met CM and he showed me the surgery which had caused him such distress; the phallus resembled what could only be described as a door

knob. CM has remained a close friend. He is married, and with his wife, has two teenage sons. CM has recently retired after having a good career as a lead Baritone in classical opera. Since 2000, and the appointment of two new phalloplasty surgeons, in London, CM has had over twenty rectification operations. In 1989 after meeting CM I set up the FTM Network for trans men, and for the next twenty years I co-ordinated the network, edited the quarterly magazine, and held the annual Network 'get-together', until I handed it over to a younger group in 2009.

20. Over the next twenty years I befriended several other trans men who had also had surgery with Mr Pryor and saw the results of their genital reconstruction surgery. MS, a very close friend who before the surgery worked as a registered nurse, has been in a wheelchair since phalloplasty surgery in 1991 severed the major nerves to his legs. RG, was burnt very badly during phalloplasty surgery, with a a dialysis tool, used to close haemorrhaging veins. Despite seven skin grafts taken from his legs and buttocks, the skin on his torso is so thin that one can still watch the food pass through his colon. Knowing these men and others, I decided not to undergo phalloplasty.

21. In 1985, I had commenced a part time law degree at Manchester Metropolitan University. I then did a Masters in Criminology, followed by a PhD; "Transsexuals and the law". In my thesis I reported on the results of a survey with around 300 many trans men and women, the correspondence and the many interviews I had undertaken with many of them. I analysed the 'lawful' discrimination they experienced, their relationship with the police and policing, and the need for legal recognition of their new gender role. In 1993 I accepted a post as a lecturer in law at Manchester Metropolitan University, and since that time have extensively researched the law and life experiences of trans people, and as a volunteer I continued to co-ordinate and provide a free legal advice to trans people. One of the cases I was advising in, concerned the negligent surgical procedures of Mr. Pryor, which St

Peter's hospital eventually settled in 1998, with Mr Pryor taking early retirement.

22. On Mr Pryor's retirement, St. Peters Hospital was left with a significant group of trans men, patients in need of continuing care, and surgical rectification in many cases. In 1999, the hospital asked Mr David Ralph a urology surgeon, to undertake their care. Mr Ralph travelled overseas to the USA and the Netherlands to learn their surgical techniques for metoidioplasty and phalloplasty. In 2000, he was a speaker at one of the FTM Network Get-togethers and he said he was considering offering the surgery in London. Mr. Ralph and I became professional colleagues, and friends at around this time

23. At the Network 'Get-together', Mr Ralph explained that trans men all wished to undergo a one-stage surgical phalloplasty procedure, which will produce a phallus that:

    i. Looks realistic,

    ii. Allows for urinary voiding in a standing position,

    iii. Is sensate and erogenous, and

    iv. Will facilitate sexual intercourse

    He explained that at that time, the best phalloplasty surgery will allow only two out of these four to be achieved, and only then through a multi-stage process requiring at least six, but often more, surgical procedures.

24. Mr Ralph also discussed Metoidioplasty; surgery in which the hood of the clitoris is removed so releasing the clitoris. Hormone therapy will have already enlarged the clitoris to between one and two centimetres in length. This surgery results in a mini penis-like sensate and erogenous organ, but it is too small for effective sexual intercourse. It is possible to re-route the urethra so that a trans man can urinate whilst

standing. However, the clitoris rarely lengthens enough for this to be possible, without needing to completely drop the trousers, so making it impossible to use a public urinal. To me, this seemed the worst of all worlds; several procedures to not be able to stand and urinate, and a high likelihood one would be unable to have sexual intercourse.

25. In 2000, I decided that I would consider having phalloplasty with Mr Ralph. I was not concerned to urinate whilst standing. By then I had lived as Stephen for more than 25 years, but there had only been one occasion when I had been unable to find a men's toilet with a stall. Of the four options outline above, I wanted to be able to have an erogenous phallus, but mostly the ability to have the closeness of sexual intercourse with my wife. My wife was supportive, though she said she did not really care whether I had a penis or not, but could understand how important it was for me. During a lengthy appointment with Mr Ralph, he outlined the two, available, surgical phalloplasty procedures.

26. The first is the free - forearm flap phalloplasty in which skin is taken from the non-writing arm is (down to the muscle). This was a tempting option as the resulting phallus is quite authentic in appearance, but my wife was concerned at the prospect of the resulting large scar on the lower arm, and as she put it, she saw much more of my arm than she would ever see of my penis. I was further concerned about the risk to the capability of the arm. A friend, Alfie S, found that his post-surgery arm had been permanently compromised, so he had to leave a lucrative profession as a decorative plasterer, and is now working in a call centre. I have always been a good carpenter, and now I write for a living. I was clear that I was not going to risk damaging my arm, and the related aspects of my life. Finally, the free-forearm flap phalloplasty surgery can mean being in hospital for six weeks or more, and that was not be feasible with small children and a busy job.

27. The second option, which is the route I chose was a new version of a pubic flap phallus. It involves taking skin flap from the lower front torso to form the new phallus. The scar potential is greatly reduced, as the surgeon can now mobilise skin from the upper torso, pulling it down to fill the 'gap' left by the flap. The scar is in a similar position tothat left by a lateral hysterectomy scar. It would be much longer, but would rarely be seen except by a partner and doctor. I knew the resulting phallus would not be as aesthetic as the forearm flap phallus, but it would be large enough for a rod or an inflatable implant, both of which would enable the phallus to become erect and stiff enough to allow sexual intercourse. The surgery required multiple stages, but only the second procedure required more than two weeks away from work, so it would mean I could use my holiday periods for many of the procedures.

D. <u>Difficulties I Experienced during the Surgeries</u>

28. Because I had previously had a hysterectomy using a lateral incision, the first surgery was required to ensure a new blood supply from the legs to the skin flap. Without this, the flap would develop gangrene meaning the new phallus would have to be amputated. The solution is to connect a new blood supply from the legs, across the lateral incision. The very first stage required I spent over £600 having laser removal of the hair from the surgical site. The price was greatly reduced as I took part in a trial. Without hair removal I would have a very hairy phallus requiring daily shaving. The surgical procedure cut through the skin to the muscle. The flap was lifted, and blood vessels from the legs were then connected to the flap area above the hysterectomy incision. Then the flap was sewn back into place. I was in hospital for four days, and returned to work fourteen days later.

29. Ten months later, after a further £500 of laser hair removal, I returned to the hospital to have the phallus formed. I have multiple sclerosis and have related difficulties with urination, so had already decided not to

have a urethral hook up. So, for me, this surgery was the dropping and shaping of the phallus. Two rods from a Flexible Dyna-rod erectable implant were inserted into the phallus. I was in hospital for ten days, and had to lie on my back with my legs supported by pillows, to ensure the flap and the skin which had been mobilised to cover where the flap came from, did not tear out of place. After I returned home a further ten days was spent in that position. The surgery itself was very painful, and It was extremely painful for my back. I had broken two discs in my back after falling off a ladder\when I was twenty, My wife who is a registered nurse and University senior lecturer, feels that the surgery had a significant impact on my back, resulting in life long severe pain,. She also feels it impacted my multiple sclerosis causing a long relapse of several years, which has never been fully resolved. The surgery scar goes right across my body, and 17 years later is still very visible, keloid in parts, and ugly. The procedure tore my abdominal muscles leaving a significant central separation (a diastasis recti) which cannot be resolved. This has left me with a permanent 'beer belly', though I do not drink

30. Around eight months after the previous surgery,I had a 10cm x 4cm slice of the epidermis of the skin removed from my leg. This was grafted onto the phallus to form a shaped head for the phallus. After the surgery, this looked good, but over the years it has flattened and is now barely visible. The patch on my leg took months to heal, and is now a significant purple patch where the veins were torn. In this procedure, the surgeon also sliced open my outer labia, and inserted silicon artificial testes to create the effect of a scrotum. I only took a week away from work. Around nine months later, in July 2001, one of the artificial testes was removed, and the pump from the Flexible Dyna-rod implant was inserted in its place. This is pumped manually to make the phallus 'erect'. This surgery was by far the most painful, as after 6 days during which the phallus was permanently erect, I had to inflate and deflate the

phallus thee times a day over the next month. The inflation and deflation required manipulation of the surgery site, and was incredibly painful. For the first week, I did it with tears in my eyes.

31. The time scale for the surgical procedures was greatly reduced because I volunteered to have the procedures filmed for training purposes, and a television documentary programme. The two part television documentary “Make me a Man” followed myself going through phalloplasty surgery, and three other trans men going through the earlier stages of treatment and surgery. It was shown on Channel 4 in 2003, and was the most watched documentary on British television that year. It was nominated and shortlisted for numerous awards.

E. Difficulties I Still Experience in My Day-to-Day Life Arising from the SRS Operations

32. I had doubts until the very last moment before proceeding with the phalloplasty surgery. However, I felt that after 25 years of living as Stephen, this was the right surgery for me. I probably knew more about the surgery than many surgeons do, so though there was a risk I felt it was worth taking, The final phallus does not look at all authentic, but my primary concern was ‘time in hospital’ rather than its appearance. I wanted a phallus that could pass in a changing room at the gym, but I am aware that on anything other than distant viewing, it will always look surgically constructed. Another disadvantage of pubic flap phalloplasty surgery is the large and ugly scar across the torso, but it is low down and so not visible unless naked.

33. I was pleased that I was now able to go swimming in ‘proper’ swimming trunks and I feel mostly good about how I look. When, after the final surgery, I looked in a full length mirror, it was if I finally saw my real self, The old version of my body vanished in an instant, and I have never been able to recall how my body had once been. My mother who had tried to dissuade me form the surgery, said that she felt she

should not say this, but my “trousers hung better” after the surgery. My wife Sarah said, that in retrospect she realised my body had often appeared unreal to her, something that was separate from the man she knew. She told me that I now “look far more like” myself.

34. I am largely pleased with the surgery, though I am very aware of the lack of success as defined by others. I am glad that I did not consider having a vaginectomy, where the vagina is removed apart from the front wall which is then used to extend the urinary tract halfway down the back of the phallus, so it resembles a hypospadias. This method ensures there are no hair bearing follicles in the urinary tract. This procedure is now quite successful in that it achieves the aim of the surgery. However, it can cause considerable damage to orgasmic ability. It is also a moderately regular occurrence for patients to suffer internal haemorrhaging, When I was considering my surgical choices, there had been at least two recently reported cases, one in the UK and one in Europe, where the trans men have died. I was never going to take those risks, and having decided on a pubic flap phalloplasty which would never look authentic, why would I worry about whether the remainder of my genitals looked like those of an ordinary man.

35. My orgasm, because of biology, whilst focused in the clitoris also produces many pleasurable sensations deep into the vagina. I have known several trans men who, having had a vaginectomy, have become suicidal because they are completely unable to reach an orgasm even with medication like Viagra, or Cialis. Others report orgasms which are greatly reduced in effect. Most tell me of this because they trust me to not identify them. They also know that I campaign for more transparency from Gender Identity Clinics, and surgeons, and wish to ensure proper patient choice, and improve services. It is also clear from my research with online surveys of over 3500 trans people throughout Europe, that few report the limitations of surgery; they do not lie, they just omit the truth. They are embarrassed and ashamed when genital

reconstruction surgery fails to achieve its aims, and feel that they 'brought this upon themselves'.

36. I also chose not to have urinary function, as the friends having this have had repeat hospital stays. Most had in the region of 10 surgical procedures. Many face a life of constant regular hospital short in-patient stays. They need repairs to fistulas and strictures; anti-biotics to resolve infections where the surgeon has 'nicked' the bowel or bladder, or they need their phallus boring to remove ureic acid crystals which cause stones by building on remaining (now internal) hair follicles. I also have a problem with internal hair follicles. Because of testosterone therapy they do not completely lose their function with laser hair removal. Testosterone promotes both body hair growth so hair follicles which post-surgery are now internal, continue to grow eventually developing into an infected boil. After lancing they leave a large hole – similar to a pressure sore. These can take months to resolve when they develop along the torso scarring. Because of the limited blood flow, those which develop on the phallus can take years to resolve, the worst taking more than 3 years of anti-biotics, and daily dressing.

37. In terms of sexual activity, the phallus has had limited success. Initially the phallus was too 'thick' for us to successfully achieve intercourse. Three years after the last procedure, I returned to the hospital to have surgery to remove a 'cake slice' from the phallus to thin it. This surgery had never been done before, but despite some success, the phallus is still thicker than the 'largest' penis on any other man. Furthermore, the phallus cannot get as erect or as hard as the penis of any other man, so intercourse is not easily achieved. The surgery also changed the 'geography' of my body, and though the clitoris is intact behind the phallus, it is hard for my wife to find and manipulate, but that (or my own manipulation) is how I reach an orgasm. However, the phallus has some pleasant sensation if held firmly and stroked, and I can feel the pleasant warmth and grip of my wife's body during intercourse. On the

few occasions when we have achieved intercourse, both of us have felt it was a truly special experience, and at least for that night, made the surgery worthwhile.

38. In retrospect, the surgery and recovery took me away far too often from time with my children. Even though I was well informed, I could not have imagined the extent of the pain experienced. The surgery caused a significant and very lengthy relapse of my Multiple sclerosis. and the two things I wanted from it; erogenous sensation and sexual intercourse with my wife have both been achieved but only minimally. I have a phallus; it only merely resembles a penis. Finally, the pump of the erectile device has now failed (they have a life span of 10 to 15 years) so I am currently waiting for further surgery to replace it. I did ask my wife whether it was 'worth the bother', she replied 'Of course you must get it replaced' so clearly, she feels it has been a success. I like that the phallus has secured my sense of self, but it could not be said to be a success.

F. Requirements for Genital Reconstruction Surgery

39. The Standards of Care of the World Professional Association for Transgender Health (WPATH[1]) requires trans patients are counselled so that they are fully aware of that changing gender role can have profound personal and social consequences, and the decision to undertake gender reassignment should include an awareness of what the familial, interpersonal, educational, vocational, economic, and legal challenges are likely to be, so that people can function successfully in their gender role.[2] This includes ensuring patients have a realistic awareness of the limitations, and possible complications of genital reconstruction surgery.

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[1] www.wpath.org
[2] Coleman, et al., 2011 p 61

40. WPATH advises that complications can include:

i. frequent urinary tract stenoses and fistulas, and occasionally necrosis of the neophallus.

ii. Metoidioplasty results in a micropenis, without the capacity for standing urination.

iii. Phalloplasty, using a pedicle or a free vascularized flap, is a lengthy, multi-stage procedure with significant morbidity that includes frequent urinary complications and unavoidable donor site scarring.[3]

and that:

iv. For this reason, many FtM patients (*trans men*) never undergo genital surgery other than hysterectomy and salpingo-oophorectomy (*ovary and fallopian tube removal*).[4]

41. Consequently, all who work in the field; physicians, surgeons, therapists, psychiatrists, lawyers and social workers, acknowledge that it is unacceptable to require genital reconstruction surgery before a trans person can obtain gender recognition for all legal purposes.

42. Surgeons who are members of WPATH advise that genital reconstruction surgery for the provision of an acceptable phallus is limited. A 2015 review of genital reconstruction surgery for female-to-male patients concludes that it has proven to be extremely challenging because there are no optimal replacements for urethral and erectile tissue.[5] Regular complications encountered in phalloplasty include

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[3] ibid p 63-64
[4] ibid p 64
[5] Morrison, et al., 2015 p 41

failure of the grafted phallus, urethral fistulas and strictures and problems with implanted erectile devices.[6]

43. Phalloplasty surgery for trans men is extremely expensive, at a minimum cost to the patient of between €55,000 and €60,000 if not funded or delivered by a public health service provider. The surgical procedures vary in number from 3 to 10 hospital inpatient stays, and where complications occur upward of 15 to 20 periods of hospitalisation. At best, even a 'state of the art' phalloplasty surgery can only ever achieve two out of the four requirements for the surgery to be considered fully successful surgery. No surgeon in Europe currently performs a one-stage procedure.

44. In 2014, Terrier et al reported on their long-term study of suprapubic phalloplasty. Overall satisfaction results were mixed. Suprapubic phalloplasty is the surgical method most commonly chosen by older trans men because, although it does not produce an authentic looking phallus, the resulting phallus can have sufficient diameter to facilitate the inclusion of an erectile device. Further, it avoids significant and stigmatising scarring to a forearm, as well as any risk of long-term harm to the limb which is used as the donor site for the phallus. The review excluded urethraplasty so as to avoid the high rate of complications normally occurring when attaching an external tube to the original urethra tract. There was no mention of scrotoplasty surgery, so presumably that was not offered to patients.

45. Although high patient satisfaction was reported, only 55% of patients reported reaching orgasm post-operatively.[7] After at least three surgical procedures, requiring a minimum of 11 days hospitalisation, with 29% needing further hospitalisation for repairs, these trans men achieved unrealistic looking genitals, with limited sensation as there was no

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[6] Rashid & Tamimy, 2013

[7] Terrier , et al., 2014

micro-surgical connection of nerves. The phallus through which they could not stand to void urine will not have erogenous sensation, and only 55% achieved sexual satisfaction.[8]

46. Research presented at the Annual Meeting of the American Urological Association on 7th May 2016, examined the post-surgical experience and satisfaction of 44 trans men who had Radial Forearm Flap surgery and urethraplasty, the choice of phalloplasty surgery for most trans men under the age of 35, found large numbers experienced complications.[9] The penile graft was lost completely in 7% of cases. Urethraplasty, in which the urethra is extended along the penile shaft, produced most complications with 54% experiencing a stricture (closure) at the point of urethral extension, and 29% a fistula where the urethra joined the phallus shaft. At 34 months post-operative follow-up, the penile implant to enable erection and intercourse had failed in 40% of the men, and at 54 months follow-up only 25% had been sexually active.[10]

47. Clearly, the surgical procedures for phalloplasty have little guarantee of success. The initial surgeries take place over a period of at 2 to 3 years, though many trans men will have ongoing surgery after 7 years. The procedures are debilitating, require extensive hospitalisation, and time off work, with post-operative care from family or friends. I have personally known of many who have suffered catastrophic failure of one or more elements of the phalloplasty/urethraplasty/ scrotoplasty and erectile device.

48. For many who commence this long road, the social and economic cost is tremendous, with medical bills up to €75,000. I have known trans men who have lost their jobs because of time away from work during recovery periods, and issues of capability during this surgery.

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[8] ibid
[9] Fernandez de Lara, et al., 2016
[10] ibid

Frequently, families and social support networks also experience great strain, and I have known several men who have lost their social support, or worse, their life partner during and because of the impact of the extensive procedures. Several have suffered severe depressive illnesses after starting the process and a few have been disabled for life after surgical complications. Several friends have attempted suicide; three who were good friends were successful in that.

49. In the UK, there are two experienced and specialist teams at the University College London hospital (UCLH). They have been performing this surgery since the late 1990s, are members of WPATH and train others from all over the world. The teams offer a three stage approach:

i. STAGE 1: Formation of the phallus and/or neo-urethra in phallus

ii. STAGE 2: Glans sculpting, scrotoplasty and connect neo-urethra to bladder

iii. STAGE 3: Erectile and testicular prosthesis[11]

which patients often erroneously understand as meaning 3 surgical procedures.

50. In 2016, after taking part in the NHS England Gender Identity Services strategic commissioning group, the UCLH teams prepared a guide to phalloplasty surgery for their patients, in which they warn that each stage might require more than one surgical procedure with up to 2 years between each operation.[12] The team requires trans men to take part in peer group counselling before any acceptance to the surgical programme. They also recommend, if not already sexually activity, that trans men experiment to discover their current genitals, particularly in

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[11] Pryor & Christopher, 2016 rev

[12] ibid

order to learn how to achieve orgasm. If they don't already have a sexual partner, they are encouraged to consider that option, so that they can discover whether phalloplasty is essential to having sexual enjoyment in their life.[13]

51. In short, it is impossible to recommend the phalloplasty surgical route to trans men. All support networks, and all of the many clinicians in the field that I know from WPATH, the European association EPATH, and the Canadian Association CPATH, which includes surgeons who perform this surgery, recommend a period of peer group counselling be undertaken before any decision on phalloplasty is taken, as often this enables many trans men to develop coping mechanisms to deal with their lack of a penis, and their partners whether female or male learn to respect the emotional and surgical limitations that trans men face.

52. It is still the case that the majority of trans men can and do live a full life as a man after hormone replacement therapy, a bilateral mastectomy, and hysterectomy. To refuse legal recognition of what, after a short-time, becomes a social reality for a trans man, i.e. their social role and position as man, causes psychological harm, leaves the individual constantly doubting their social place and acceptance by others. They either live in constant fear of disclosure, accidental or otherwise, by others, or they decide to be 'out' which leaves them vulnerable to transphobic prejudice, discrimination and harassment in the workplace and their community.

53. Whether the trans man then uses his full range of genital organs for sexual activity is a matter to be decided between him and his partner in the privacy of the bedroom. Most trans men will discuss their sexual choices using terms which describe their genitals but as if differently abled male genitals, just as a paraplegic person might discuss their

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[13] Garcia, et al., 2014

sexual needs. Importantly, many speak of enjoyable vaginal sexual sensation at orgasm without penetration occurring, and would not wish to have a vaginectomy (where the vagina is removed) even if phalloplasty surgery was perfect. Many surgeons will recommend the retention of the vagina for its tissues, as surgical procedures are increasingly being developed wherein part of the vaginal tissue is used in the construction, or repair, of the urethraplasty, particularly if a trans man experiences repeated fistulas (where the urine leaks).

54. The adoption of sterilisation as a precondition for gender reassignment has been treated as a priori good sense that needs no specific justification[14].Yet the legal requirements for gender recognition in states which have a significant record of human rights abuse such as Turkey, Argentina and South Africa, do not include a demand for infertility or sterilisation. The Northern European states which require(d) sterility in exchange for legal recognition, are generally those where in the past, negative eugenics, the forced sterilisation of unfit, asocial, groups of people was accepted medical practice. Clearly, the discourses which led to the `hygienic' practices of the 1920s to 1970s are still just bubbling under the surface.

55. The requirement of sterility holds within it an assumption that trans people are likely to be bad parents because they offer bad gender roles, or they are more prone to perpetrate certain sorts of abuse or neglect. These fallacies are rarely challenged, however research with the children of transsexual parents has shown them to be as likely to be well balanced and heterosexually orientated as any other group of children[15].

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14 Whittle, S: Gemeinschaftsfremden - Or How To Be Shafted By Your Friends: Sterilisation Requirements And Legal Status Recognition For The Transsexual, in Beresford,S., Monk, D., Moran,L: Legal Queeries, 1998, London: Cassell

15 Green, R; Transsexuals' Children", The International Journal of Transgenderism, 1998, Vol 2, Oct-Dec, pages 1-7.

56. The assumption of sterility before legal recognition is excessive, as in reality, in almost all cases after a few years of testosterone therapy, trans men will have been rendered infertile for all procreative purposes. Increasingly clinicians are acknowledging that a demand for sterilisation before legal recognition is cruel and a breach of human rights. There are some trans who because of disability or other health reasons cannot take the high hormone levels normally prescribed, nor can they necessarily undergo extensive surgery. Should they, by virtue of being unable to be rendered permanently sterile, be denied Legal Gender Recognition?

57. Furthermore, even if trans men are physical able, whilst a hysterectomy is generally very safe, as with any major surgery comes the risk of complications; blood clots, infections, excessive bleeding, adverse reaction to anesthesia, damage to the urinary tract, bladder, rectum or other pelvic structures during surgery, ovarian cancer if the ovaries are not removed, and rarely death. Requiring a trans man to undergo a hysterectomy; still a major surgical procedure, for no therapeutic reason other than to qualify for legal recognition of the gender identity they are living in, is increasingly acknowledged as an overarching, and excessive control of that a person's autonomy. The European Court of Human Rights held in the cases of Goodwin, and I v the UK [2002] that:

> Under Article 8 of the (European) Convention (on Human Rights) in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings[16]

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[16] I v The United Kingdom Government, [2002] ECHR (case no. 25680/94) para 70

58. Some trans men, like many trans women, will have parented and cared for children before commencing gender reassignment, those men will usually have been a birth parent to those children. There are also a numerically a very few who will start, then stop and postpone further hormone therapy, in order to become pregnant and carry a child to term. In a recent study (not yet reported) we interviewed eleven trans men who had a child, or in one case, two children, after commencing gender reassignment treatment. None of the men had enjoyed being pregnant, or giving birth, but all were very proud fathers of their children. Nine of those men took this route because their female partner was medically unable to undertake a pregnancy. One, in a gay relationship, and in the very early stages of gender reassignment treatment had felt this would be the only way that he and his partner could found a family. The last interviewee, who also identified as a gay man, had unexpectedly got pregnant in the early months of testosterone therapy. He decided to carry the baby to term and then place it for adoption, as he was not in a stable relationship, nor felt he was able to provide an appropriate home for a child.

59. Most health professionals now recognize that many people significantly benefit from gender reassignment treatments and surgeries to alleviate their personal gender discomfort, and without such care, they will develop significant related mental health problems. However, as the Gender Identity field has matured, health professionals increasingly recognise that (a) some people with gender identity disorders will only need hormone therapy, (b) others will need hormone therapy and surgery to remove or create breasts, (c) some will need hormone therapy, breast surgery and genital reconstruction, and (d) some trans people will have no need of either. These are not matters for the law to consider when determining a person's gender identity for legal purposes. WPATH recognizes that

i. health is dependent upon not only good clinical care but also social and political climates that provide and ensure social tolerance, equality, and the full rights of citizenship. Health is promoted through public policies and legal reforms that promote tolerance and equity for gender and sexual diversity and that eliminate prejudice, discrimination, and stigma. WPATH is committed to advocacy for these changes in public policies and legal reforms.[17]

G. <u>Conclusion</u>

60. I am certain that a requirement for any surgical process; a hysterectomy and oophorectomy and in particular, any sort of genital reconstruction prior to legal gender recognition, is without doubt, cruel as it would effectively ban most trans men from ever being recognised as a person of the gender identity in which they live.

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[17] Supra n2 p 1-2

61. It would be extremely unethical to recommend genital reconstruction of any sort; phalloplasty, metoidioplasty, or scrotoplasty, to a trans men because there is clear evidence pointing to high levels of serious complications which can damage the person's psychological well-being, end their ability to form relationships, and destroy any possibility of enjoying sexual activities. Such a requirement would be, without doubt, an abuse of their right to personal autonomy. For many the requirement would become akin to cruel and unusual punishment, possibly even torture.

AFFIRMED by Stephen Thomas Whittle on the eight day of January 2018)

At Stockport Cheshire England U.K. BEFORE ME NIGEL JOHN ARTHUR GLASSEY NOTARY PUBLIC in and for STOCKPORT aforesaid)

N.J.A. Glassey
Notary Public

NIGEL JOHN ARTHUR GLASSEY
NOTARY PUBLIC
Nigel J. A. Glassey
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Protocol No: N1500/18/4016.

STW: 8th January 2018

HCAL 189/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 189 OF 2017

BETWEEN

TSE, Henry Edward — Applicant

and

Commissioner of Registration — Putative Respondent

AFFIRMATION OF PROFESSOR STEPHEN THOMAS WHITTLE

Dated this 8th (eight) day of January 2018
Dated this 8th (eight) day of January 2018

CHEN, NOEL
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08-01-2018

Received the sum of £ 75-00 Cash/~~Cheque~~ From Prof. S.T. Whittle

Re: Notarising Power of Attorney / Hong Kong

Signed G.O Glassey

Nigel Glassey Notary Public/ on behalf of Nigel Glassey Notary Public

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